IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WA.No. 2872 of 2007

AGAINST THE JUDGEMENT IN WPC.34791/2007 Dated 26/11/2007
.....

APPELLANT/PETITIONER:

M/S.XEROX INDIA LTD., (MODI XEROX LTD),
36/1951, IST FLOOR, KALOOR TOWERS,
ELAMKULAM ROAD, KALOOR, KOCHI-682 017,
ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGER CA. SRI.P.VISWANATHAN.

BY ADV. SRI.A.KUMAR

RESPONDENTS/RESPONDENTS:
---

1. THE INTELLIGENCE INSPECTOR,
COMMERCIAL TAXES, SQUAD NO.II,
WAYANAD, KALPETTA.

2. THE ASSISTANT COMMISSIONER,
KVAT SPECIAL CIRCLE II,
DEPT. OF COMMERCIAL TAXES,
THEVARA,
ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2872 of 2007

Dated, this the 4th day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of the order passed by the learned Single Judge in W.P.(C) No.34791 of 2007 dated 26th November, 2007.

(2). In the writ petition filed, the petitioner had primarily called in question the show cause notice issued by the check post authority.

(3). The check post authority is of the view that the documents carried by the person in charge of the goods vehicle are defective and not as provided under Section 47 of the Kerala Value Added Tax Act. In the notice itself, it was made known to the person in charge of the goods vehicle that the detained goods would be released, provided sufficient bank guarantee is furnished before the detaining authority, subject to further orders that may be passed after considering the objections filed to the show cause notice.

(4). After filing objections to the show cause notice issued by the check post authority, the petitioner is before this Court by filing the aforesaid writ petition.

(5). The learned Single Judge being of the opinion that, what is questioned by the petitioner in the writ petition is only a show cause notice, has refused to interfere with the said notice. Further has directed the respondent to release the detained goods, provided the petitioner offers bank guarantee as directed by the check post authority.

(6). Aggrieved by the said order of the learned Judge, the

petitioner is before us in this writ appeal.

(7). Sri. Kumar, learned counsel appearing for the appellant would submit that, the check post authority was not justified in issuing the show cause notice merely on the ground that the invoices produced by the petitioner show under valuation of the goods carried in the vehicle. Therefore, the learned Single Judge ought to have interfered with the show cause notice issued by the check post authority.

(8). A look at the provisions of the Act would clearly indicate that, if the check post authority has reason to suspect that the goods under transport are not covered by proper and genuine documents or that the person transporting the goods is attempting to evade payment of tax due under the Act, he may detain the goods and continue the other proceedings envisaged under the Act.

(9). In the instant case, the authority being of the opinion that the value mentioned in the invoice and the value shown on the article (MRP) are different and, therefore, there is an attempt to evade payment of tax due under the Act. Therefore, has issued a show cause notice, directing the person in charge of the goods vehicle to show cause why further proceedings under the Act should not be taken. In the petition filed, it is not the case of the assessee that the authority who has issued notice lacks jurisdiction or has been issued in violation of any of the provisions of he Act. In such a situation, in our opinion, it is expected of the person in charge of the vehicle or the owner of the goods to file his objections to the show cause notice and take up all such objections which are available to him, including the assertions made in the petition and it is

for the authority to consider those objections and pass orders in accordance with law. Therefore, in our view, the petition filed by the petitioner was wholly premature and therefore, the learned Judge was justified in rejecting the writ petition.

(10). In view of the above, we do not think that the petitioner has made out a case for us to interfere with the orders passed by the learned Judge. Accordingly, we reject the writ appeal. However, we direct the first respondent to consider the objection said to have been filed by the appellant/petitioner, as expeditiously as possible, at any rate, within four weeks from the date of receipt of this Court's order. All the contentions of both parties are left open.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK.